

Introduced by Senator Dutton

February 15, 2011

An act to amend Section 511 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 378, as introduced, Dutton. Employment: alternative workweek schedules.

Existing law authorizes an employer to propose an alternative workweek schedule, that authorizes work for the affected employees for no longer than 10 hours a day within a 40-hour workweek without the requirement to pay overtime wages, that may be either a single, standard work schedule or part of a menu of work schedule options offered to the employees. Under existing law, approval by secret ballot election of at least $\frac{2}{3}$ of the affected employees in a readily identifiable work unit is required for adoption of an alternative workweek schedule. Existing law requires the employer to pay overtime compensation to employees who work more than their regularly scheduled hours under the alternative workweek and to make reasonable accommodations to find a work schedule that does not exceed 8 hours per day for employees who were eligible to vote in the election but are unable to work the alternative workweek hours.

This bill would provide that an alternative workweek schedule adopted pursuant to those provisions may include a regularly scheduled alternative workweek that authorizes work by the affected employees for more than 10 hours a day, as long as the employees are paid at the appropriate overtime rate set forth in those provisions. The bill would provide a definition of "regularly scheduled." The bill further would exempt from those provisions employers with 5 or fewer employees,

but would permit such employers and their employees to voluntarily enter into a revocable written agreement setting forth an alternative workweek schedule that allows an employee to work up to 10 hours a day, 40 hours a week, without the payment of overtime wages, with the requirement to pay a prescribed rate of overtime pay for excess hours and days.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 511 of the Labor Code is amended to
2 read:
3 511. (a) Upon the proposal of an employer, the employees of
4 an employer may adopt a regularly scheduled alternative workweek
5 that authorizes work by the affected employees for no longer than
6 10 hours per day within a 40-hour workweek without the payment
7 to the affected employees of an overtime rate of compensation
8 pursuant to this section. *An alternative workweek schedule adopted*
9 *pursuant to this section may include a regularly scheduled*
10 *alternative workweek that authorizes work by the affected*
11 *employees for more than 10 hours a day, as long as the employees*
12 *are paid at the appropriate rate as set forth in subdivision (b). A*
13 proposal to adopt an alternative workweek schedule shall be
14 deemed adopted only if it receives approval in a secret ballot
15 election by at least two-thirds of affected employees in a readily
16 identifiable work unit. The regularly scheduled alternative
17 workweek proposed by an employer for adoption by employees
18 may be a single work schedule that would become the standard
19 schedule for workers in the work unit, or a menu of work schedule
20 options, from which each employee in the unit would be entitled
21 to choose. Notwithstanding subdivision (c) of Section 500, the
22 menu of work schedule options may include a regular schedule of
23 eight-hour days that are compensated in accordance with
24 subdivision (a) of Section 510. Employees who adopt a menu of
25 work schedule options may, with employer consent, move from
26 one schedule option to another on a weekly basis.
27 (b) An affected employee working longer than eight hours but
28 not more than 12 hours in a day pursuant to an alternative
29 workweek schedule adopted pursuant to this section shall be paid

1 an overtime rate of compensation of no less than one and one-half
2 times the regular rate of pay of the employee for any work in excess
3 of the regularly scheduled hours established by the alternative
4 workweek agreement and for any work in excess of 40 hours per
5 week. An overtime rate of compensation of no less than double
6 the regular rate of pay of the employee shall be paid for any work
7 in excess of 12 hours per day and for any work in excess of eight
8 hours on those days worked beyond the regularly scheduled
9 workdays established by the alternative workweek agreement.
10 Nothing in this section requires an employer to combine more than
11 one rate of overtime compensation in order to calculate the amount
12 to be paid to an employee for any hour of overtime work.

13 (c) An employer shall not reduce an employee's regular rate of
14 hourly pay as a result of the adoption, repeal, or nullification of
15 an alternative workweek schedule.

16 (d) An employer shall make a reasonable effort to find a work
17 schedule not to exceed eight hours in a workday, in order to
18 accommodate any affected employee who was eligible to vote in
19 an election authorized by this section and who is unable to work
20 the alternative schedule hours established as the result of that
21 election. An employer shall be permitted to provide a work
22 schedule not to exceed eight hours in a workday to accommodate
23 any employee who was hired after the date of the election and who
24 is unable to work the alternative schedule established as the result
25 of that election. An employer shall explore any available reasonable
26 alternative means of accommodating the religious belief or
27 observance of an affected employee that conflicts with an adopted
28 alternative workweek schedule, in the manner provided by
29 subdivision (j) of Section 12940 of the Government Code.

30 (e) The results of any election conducted pursuant to this section
31 shall be reported by an employer to the Division of Labor Statistics
32 and Research within 30 days after the results are final.

33 (f) Any type of alternative workweek schedule that is authorized
34 by this code and that was in effect on January 1, 2000, may be
35 repealed by the affected employees pursuant to this section. Any
36 alternative workweek schedule that was adopted pursuant to Wage
37 Order Numbers 1, 4, 5, 7, or 9 of the Industrial Welfare
38 Commission is null and void, except for an alternative workweek
39 providing for a regular schedule of no more than 10 hours' work
40 in a workday that was adopted by a two-thirds vote of affected

1 employees in a secret ballot election pursuant to wage orders of
2 the Industrial Welfare Commission in effect prior to 1998. This
3 subdivision does not apply to exemptions authorized pursuant to
4 Section 515.

5 (g) Notwithstanding subdivision (f), an alternative workweek
6 schedule in the health care industry adopted by a two-thirds vote
7 of affected employees in a secret ballot election pursuant to Wage
8 Order Numbers 4 and 5 in effect prior to 1998 that provided for
9 workdays exceeding 10 hours but not exceeding 12 hours in a day
10 without the payment of overtime compensation shall be valid until
11 July 1, 2000. An employer in the health care industry shall make
12 a reasonable effort to accommodate any employee in the health
13 care industry who is unable to work the alternative schedule
14 established as the result of a valid election held in accordance with
15 provisions of Wage Order Number 4 or 5 that were in effect prior
16 to 1998.

17 (h) Notwithstanding subdivision (f), if an employee is
18 voluntarily working an alternative workweek schedule providing
19 for a regular work schedule of not more than 10 hours' work in a
20 workday as of July 1, 1999, an employee may continue to work
21 that alternative workweek schedule without the entitlement of the
22 payment of daily overtime compensation for the hours provided
23 in that schedule if the employer approves a written request of the
24 employee to work that schedule.

25 (i) For purposes of this section, "work unit" includes a division,
26 a department, a job classification, a shift, a separate physical
27 location, or a recognized subdivision thereof. A work unit may
28 consist of an individual employee as long as the criteria for an
29 identifiable work unit in this section is met.

30 (j) *For purposes of this section, the term "regularly scheduled"*
31 *means the employee is scheduled to work the same number of*
32 *workdays and the same number of hours per workday as the work*
33 *schedule or schedules adopted through the election. An alternative*
34 *workweek schedule is valid even if the actual days scheduled and*
35 *the start and end times of each shift change from one week to the*
36 *next.*

37 (k) *Nothing in this section applies to employers with five*
38 *employees or fewer. Such employers may voluntarily enter into a*
39 *written agreement with their employees that sets forth an*
40 *alternative workweek schedule that allows an employee to work*

1 up to 10 hours a day, 40 hours a week, without the payment of an
2 overtime rate of compensation. If the agreement provides for work
3 of over 10 hours a day or 40 hours in a week, the employer shall
4 pay overtime wages at one and one-half times the employee's
5 regular rate of pay for all hours worked over 40 hours in a
6 workweek or over 10 hours in a workday, whichever is the greater
7 number of hours. All work performed in excess of 12 hours per
8 workday and in excess of eight hours on a fifth, sixth, or seventh
9 day in the workweek shall be paid at double the employee's regular
10 rate of pay. The agreement must provide an opportunity for either
11 party to revoke it.

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